



STATE OF WASHINGTON
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FREQUENTLY ASKED QUESTIONS

WSDA Endangered Species Program

July 24, 2003

1. What is the current status of the *WTC v. EPA* lawsuit?

On Wednesday, July 16, 2003, Judge Coughenour of the U.S. District Court for the Western District of Washington ruled that he intends to impose buffers on all applications of 54 pesticides near streams and other water bodies accessible to salmon that are protected under the federal Endangered Species Act. The ruling is in response to a request by the Washington Toxics Coalition (WTC) for interim measures while EPA completes a review of the effect of the pesticides on salmon. That review was ordered last year after the court ruled that EPA had violated the ESA by failing to consult on the impacts of pesticides on salmon as required under Section 7 of the act.

2. What specifically did the court order say?

In the order Judge Coughenour stated that:

- a. "Previously, the court determined 'as a matter of law, that EPA has violated section 7(a)(2) of the ESA with respect to its ongoing approval of [54] pesticide active ingredients and registration of pesticides containing those active ingredients.' Given this substantial procedural violation of section 7(a)(2), plaintiffs are entitled to injunctive relief with respect to the 54 ongoing agency actions pending EPA compliance with section 7 (a)(2)."
- b. "...neither EPA, nor Croplife has demonstrated that the 54 ongoing agency actions, as presently defined, are non-jeopardizing to threatened and endangered salmonids."¹
- c. "...the plaintiffs have demonstrated, with reasonable scientific certainty, that the requested buffer zones – 20 yards for ground applications, 100 yards for aerial applications – will, unlike the status quo, substantially contribute to the prevention of jeopardy."¹
- d. "The evidence submitted...demonstrate that pesticide application buffer zones are a common, simples, and effective strategy to avoid jeopardy to threatened and endangered salmonids."¹
- e. Oral arguments will be presented on August 14, 2003 where, "EPA and Croplife may present arguments with respect to the specific size of the ground and aerial buffer zones requested by plaintiffs."¹ EPA cannot present

arguments that no buffer zones are needed, except for those pesticides which have already been determined to have “no effect” on salmonids.

3. Is the ruling in place today?

No, the judge has scheduled oral arguments for August 14, 2003. It is expected that a final ruling will be released after that date.

4. What are the affected waterways?

It is unclear presently exactly which waterways this ruling may be applied to. The WTC requested the buffers be imposed for, “streams and water bodies accessible to listed salmon.”²

5. What is the list of 54 pesticides in the lawsuit?

Table 1 provides a list of the 54 pesticides named in the WTC lawsuit. The table also provides a list of those pesticides for which EPA has already made a “no effect” determination. Pesticides which have already received an ‘no effect’ determination are not included in this order.

6. Were there any other actions requested as interim measures?

Yes, a smaller subset of the 13 most frequently detected pesticides were requested to be removed from homeowner use in urban watersheds, which would mean a change for these pesticides to become Restricted Use. Specifically, the WTC requested, “To ensure that only certified applicators apply these pesticides in urban watersheds, the Toxics Coalition asks that the sale of these 13 pesticides be limited to licensed pesticide dealers in Washington, Oregon, and California.”²

What are on the “list of 13?”

The attached spreadsheet provides a list of the 13 pesticides where Restricted Use was requested. The 13 pesticides are noted on spreadsheet by a red asterisk.

Did the judge grant the Restricted Use request?

No, the judge did not grant this request, but rather stated, “In addition, the Court will entertain arguments regarding the additional urban-use restrictions requested for the 13 pesticide active ingredients.”¹

Who are the affected parties?

The affected parties may be all pesticide users. However, we will not know until the judge issues his final ruling.

How will the restrictions be imposed?

It is unclear how any particular restrictions will be imposed. It is expected that in the final ruling the court will identify specifically who is affected and how they will be notified.

Citations:

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1. Order for Further Injunctive Relief – July 16, 2003
2. Motion for Further Injunctive Relief – November 26, 2002